

FILED

AUG 16 2007

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

**THE STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 07-2-01894-6

Plaintiff,

v.

VETERANS OF WESTERN WASHINGTON in
its own name and doing business as, VWV,
WESTERN WASHINGTON VETERANS,
WWV, CHILDREN'S CANCER ALLIANCE,
HOSPITALIZED CHILDREN'S SOCIETY,
COALITION AGAINST DOMESTIC
VIOLENCE, FAMILY SERVICES OF PUGET
SOUND; ANY AFFILIATE OF VETERANS
OF WESTERN WASHINGTON; ROBERT
MELBOURNE SHAY, a/k/a R.M. FUKA,
Owner and/or Secretary of Veterans of Western
Washington, individually and as part of his
marital community; MICHAEL JOSEPH SHAY,
Owner and/or President of Veterans of Western
Washington, individually and as part of his
marital community; MARCELLO MANUEL
GRANIEL, President of Veterans of Western
Washington, individually and as part of his
marital community,

STIPULATED JUDGMENT
AND ORDER AS TO
VETERANS OF WESTERN
WASHINGTON, ET AL.;
ROBERT MELBOURNE SHAY

Defendants.

I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

STIPULATED JUDGMENT AS TO
DEFENDANTS VETERANS OF WESTERN
WASHINGTON, ET AL.; ROBERT M. SHAY- 1

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

COPY

1.2 Judgment Debtors: Veterans of Western Washington, in its own name and doing business as VWW, Western Washington Veterans, WWV, Children's Cancer Alliance, Hospitalized Children's Society, Coalition Against Domestic Violence, Family Services of Puget Sound; any Affiliate of Veterans of Western Washington; Robert Melbourne Shay, a/k/a R.M. Fuka, and his marital community

1.3 Principal Judgment Amount:

a. Costs and Fees: **\$6920.00** (\$13,840 total; \$6920.00 suspended on condition of compliance with all of the terms of the Judgment and Decree.)

b. Restitution: **\$3005.00** (See Section VI below)

c. Civil Penalties: **\$0** (\$120,000 total, the entire penalty is suspended on condition of compliance with all of the terms of the Judgment and Decree.)

d. Total Judgment: **\$9925.00** (\$120,000.00 in civil penalties and \$6920.00 in costs and attorney's fees are suspended on condition of compliance with all of the terms of the Judgment and Decree).

1.4 Post-Judgment Interest Rate: 12 percent per annum (for any amount owing after the agreed upon final payment date has passed).

1.5 Attorney for Judgment Creditor: Shannon Smith, Assistant Attorney General

1.6 Attorney for Defendants: Roger Hawkes, Esq.

Plaintiff, State of Washington, commenced this action on September 19, 2006 pursuant to RCW 19.86, the Consumer Protection Act (“CPA”), and RCW 19.09 the Charitable Solicitations Act. The Defendants were served with the Summons and Complaint.

Plaintiff appeared by and through its attorneys, Robert M. McKenna, Attorney General; and Shannon Smith, Assistant Attorney General; and Defendants appeared through their attorney, Roger Hawkes.

1 Plaintiff and Defendants have agreed upon a basis for adjudication of the matters
2 alleged in the Complaint, and to the entry of this Stipulated Judgment, Findings of Fact,
3 Conclusions of Law, Judgment and Decree (hereinafter referred to as "Stipulated Judgment"
4 or "Decree" or "Order") pursuant to CR 54.

5 The Court has determined there is no just reason for delay in the entry of final
6 judgment against Defendants, and being fully advised, the Court hereby makes and enters the
7 following:

8 II. FINDINGS OF FACT

9 2.1 This action was commenced by the State of Washington pursuant to Chapter
10 19.86 RCW, the Consumer Protection Act and RCW 19.09, the Charitable Solicitations Act.

11 2.2 Unless otherwise specified, the term "Defendants" as used in this document
12 shall mean Veterans of Western Washington, all names by which it has conducted charitable
13 solicitations, and Robert Melbourne Shay, a/k/a R. M. Fuka.

14 2.3 Defendants accepted or hereby waive personal service of the Summons and
15 Complaint.

16 2.4 Defendants recognize and state that this Stipulated Judgment is entered into
17 voluntarily and that no promises or threats have been made by the Attorney General's Office
18 or any member, official, agent, or representative thereof to induce Defendants to enter into
19 this Stipulated Judgment except as provided herein.

20 2.5 Defendants further agree that they will not oppose the entry of this Stipulated
21 Judgment on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil
22 Procedure and hereby waive any objections based thereon.

23 2.6 The violations alleged in the State's Complaint, have been engaged in by
24 Defendants wholly or in part in Snohomish County, state of Washington, and elsewhere in the
25 state of Washington. Defendants transact or have transacted business in the state of
26 Washington.

1 **2.7** Defendant Veterans of Western Washington, is a Washington sole
2 proprietorship, with its principal place of business at 19707 64th Ave. W., Suite 109,
3 Lynnwood, Washington 98036. Veterans of Western Washington solicited and collected
4 charitable contributions in the State of Washington its own name and under the names VWW,
5 Western Washington Veterans, WWV, Children's Cancer Alliance, Hospitalized Children's
6 Society, Coalition Against Domestic Violence, Family Services of Puget Sound. Defendant
7 Robert Melbourne Shay, a/k/a R.M. Fuka, is an owner of Veterans of Western Washington
8 since at least December 19, 2005, and as such, controls its policies, activities, and practices,
9 including those alleged in this Complaint occurring on or after December 19, 2005. From at
10 least July 26, 2002 through December 18, 2005, Defendant was corporate secretary of, and
11 was a principal, manager, accountant, or otherwise involved in the day-to-day activities
12 conducted by, Veterans of Western Washington and as such controlled its policies, activities,
13 and practices, including those alleged in this Complaint occurring between July 26, 2002 and
14 December 18, 2005. Defendant Robert Melbourne Shay resides at 22106 7th Street, S.W.,
15 Unit A, Edmonds, Washington, 98026. Defendant Robert Melbourne Shay is married to
16 Nellie M. Shay and together they constitute a marital community. All actions taken by
17 Defendant Robert Melbourne Shay as alleged in this Complaint are for the benefit of his
18 marital community. Defendant resides in the state of Washington and transacts or has
19 transacted business in the state of Washington.

20 **2.8** Since at least 2002, Defendants have solicited charitable contributions under
21 the names "Veterans of Western Washington," "VWW," "Western Washington Veterans,"
22 "WWV," "Children's Cancer Alliance," "Hospitalized Children's Society," "Coalition
23 Against Domestic Violence," and "Family Services of Puget Sound." None of the entities
24 were registered as charitable organizations with the Secretary of States after October 26, 2004.
25 From October 26, 2004 through at least April of 2006, the Defendants solicited and collected
26

1 charitable contributions from the general public without being registered as a charitable
2 organization with the Secretary of State.

3 **2.9** In their written solicitation material distributed to Washington consumers,
4 Defendants misrepresented that Veterans of Western Washington, Children's Cancer Alliance,
5 and Hospitalized Children's Society were registered with the Secretary of State under
6 Registration No. 9940, when they were not so registered.

7 **2.10** In written solicitation material they distributed to Washington consumers,
8 Defendants failed to clearly and conspicuously disclose in the body of the solicitation material
9 that the Defendants' notice of solicitation is on file with the Secretary of State and that the
10 potential donor could obtain additional financial disclosure information from the Secretary of
11 State at the Secretary of State's published number.

12 **2.11** Defendants failed to maintain accurate, current, and readily available books
13 and records regarding their charitable solicitation and collection activities for three years after
14 the effective period to which the documents relate.

15 **2.12** Defendants solicited and collected charitable contributions under the names,
16 Secretary of State Registration numbers, Employer Identification Numbers (EIN), and Unified
17 Business Identifier (UBI) numbers of the "Handicapped Children's Services" and "Family
18 Services of Puget Sound," without the consent of those entities.

19 **III. CONCLUSIONS OF LAW**

20 Based on the foregoing Findings of Fact, the Court hereby makes the following
21 Conclusions of Law:

22 **3.1** This Court has jurisdiction of the subject matter of this action and of the parties.
23 The Plaintiff's Complaint in this matter states claims upon which relief may be granted under the
24 provisions of Chapter 19.86 RCW, the Consumer Protection Act and RCW 19.09 the
25 Charitable Solicitations Act.

1 **3.2** Defendants' acts and practices as described in Finding of Fact 2.8 violate
2 RCW 19.09.065 and 19.09.100(16), (18), and are *per se* violations of RCW 19.86 the Consumer
3 Protection Act pursuant to RCW 19.09.340.

4 **3.3** Defendants' acts and practices as described in Finding of Fact 2.9 violate RCW
5 19.09.100(12), and are *per se* violations of RCW 19.86 the Consumer Protection Act pursuant to
6 RCW 19.09.340. Defendants' acts and practices as described in Finding of Fact 2.9 also have the
7 capacity to mislead a substantial number of consumers, are unfair and deceptive, and are unfair
8 methods of competition and therefore constitute violations of RCW 19.86.020, which prohibits
9 unfair methods of competition and unfair or deceptive acts or practices in the conduct of any
10 trade or commerce, notwithstanding that they are *per se* violations of the Consumer Protection
11 Act pursuant to RCW 19.09.340.

12 **3.4** Defendants' acts and practices as described in Finding of Fact 2.10 violate
13 RCW 19.09.100(1), (18), and are *per se* violations of RCW 19.86 the Consumer Protection Act
14 pursuant to RCW 19.09.340. Defendants' acts and practices as described in Finding of Fact 2.10
15 also have the capacity to mislead a substantial number of consumers, are unfair and deceptive, and
16 are unfair methods of competition and therefore constitute violations of RCW 19.86.020, which
17 prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct
18 of any trade or commerce, notwithstanding that they are *per se* violations of the Consumer
19 Protection Act pursuant to RCW 19.09.340.

20 **3.5** Defendants' acts and practices as described in Finding of Fact 2.11 violate
21 RCW 19.09.100(18), 19.09.200, 19.09.210 and WAC 434-120-125, 434-120-130, 434-120-135,
22 434-120-140 and are *per se* violations of RCW 19.86 the Consumer Protection Act pursuant to
23 RCW 19.09.340. Defendants' acts and practices as described in Finding of Fact 2.11 also have
24 the capacity to mislead a substantial number of consumers, are unfair and deceptive, and are
25 unfair methods of competition and therefore constitute violations of RCW 19.86.020, which
26 prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct

1 of any trade or commerce, notwithstanding that they are *per se* violations of the Consumer
2 Protection Act pursuant to RCW 19.09.340.

3 **3.6** Defendants' acts and practices as described in Finding of Fact 2.12 violates
4 RCW 19.09.100(16), (18), and 19.09.200(1), and are *per se* violations of RCW 19.86 the
5 Consumer Protection Act pursuant to RCW 19.09.340. Defendants' acts and practices as
6 described in Finding of Fact 2.12 also have the capacity to mislead a substantial number of
7 consumers, are unfair and deceptive, and are unfair methods of competition and therefore
8 constitute violations of RCW 19.86.020, which prohibits unfair methods of competition and
9 unfair or deceptive acts or practices in the conduct of any trade or commerce, notwithstanding
10 that they are *per se* violations of the Consumer Protection Act pursuant to RCW 19.09.340.

11 **3.7** Plaintiff, State of Washington, is authorized by RCW 19.09.340 and 19.86.080 to
12 enjoin violations of the Consumer Protection Act, to obtain restitution on behalf of persons
13 harmed by such violations, and to obtain such further and other relief as the court may deem
14 appropriate, including civil penalties up to the amount of \$2,000.00 per violation, and attorneys'
15 fees and costs.

16 **3.8** Plaintiff is entitled to a Judgment enjoining and restraining Defendants and
17 any and all persons in active concert or participation with Defendants from engaging in the
18 future in the acts or practices described in Findings of Fact 2.8 through 2.12 that violate the
19 Consumer Protection Act or the Charitable Solicitation Act.

20 **3.9** Plaintiff is entitled to a Judgment ordering Defendants to pay Plaintiff's costs
21 and attorney's fees the amount of \$13,840.50. This request for attorney's fees is reasonable
22 and Plaintiff is entitled to a judgment in this amount. However, \$6920.00 of Plaintiff's
23 reasonable costs and attorney's fees is hereby imposed on Defendants, and \$6920 is
24 suspended, provided Defendants comply all of the terms of this Judgment and Decree.
25 Defendants shall pay \$6920.00 imposed costs and attorney's fees to plaintiff in full no later
26 than 60 days after the entry of this Judgment and Decree. This payment shall be in addition

1 to and exclusive of any costs or fees which may be incurred by Plaintiff in enforcing the
2 provisions of this Judgment, including the costs of any collection actions. If the Plaintiff
3 successfully enforces the provision of this Judgment against Defendants, then Defendants
4 shall pay the \$6920.00 in suspended costs and attorney's fees, which shall be in addition to
5 the Plaintiff's costs and attorney's fees incurred in enforcing the Judgment.

6 **3.10** Plaintiff is entitled to a Judgment ordering Defendants to comply with the
7 injunctive provisions described below.

8 **3.11** Plaintiff is entitled to a Judgment ordering that Defendants shall be subject to
9 suspended civil penalties as described below.

10 **3.12** Plaintiff is entitled to a Judgment ordering Defendants to pay restitution as
11 described below.

12 Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby
13 makes the following Judgment and Order:

14 It is hereby ADJUDGED, ORDERED, and DECREED as follows:

15 **IV. INJUNCTIONS**

16 **4.1** The injunctive provisions of this Judgment and Order shall apply to the
17 Defendants, and the Defendants' successors, assigns, officers, agents, servants, employees,
18 representatives, affiliates, and all other persons or entities in active concert or participation with
19 the Defendants.

20 **4.2** Defendants shall immediately inform all successors, assigns, transferees, officers,
21 agents, servants, employees, representatives, attorneys and all other persons or entities in active
22 concert or participation with Defendants of the terms and conditions of this Judgment and Order.

23 **4.3 Imposed Injunctions.** Defendants and all successors, assigns, transferees,
24 officers, agents, servants, employees, representatives, affiliates, attorneys and all other persons or
25 entities in active concert or participation with Defendants are hereby permanently enjoined and
26

1 restrained from directly or indirectly engaging in the following acts or practices in the State of
2 Washington:

3 (a) Soliciting or collecting charitable contributions without current registration
4 as a charitable organization with the Washington Secretary of State as required by
5 RCW 19.09.065 as currently enacted or subsequently amended;

6 (b) If Defendants are exempt from registration with the Washington
7 Secretary of State pursuant to RCW 19.09.076(1) and WAC 434-120-100(1)(c), currently
8 enacted or subsequently amended, Defendants shall not solicit or collect charitable
9 contributions unless and until they file an optional registration with the Washington Secretary
10 of State as provided in WAC 434-120-110 as currently enacted or subsequently amended;

11 (c) Representing, directly or by implication, that Defendants or any other
12 charitable organization or entity Defendants may form is registered with the Washington
13 Secretary of State unless it is so registered;

14 (d) Operating as a charitable organization in the State of Washington
15 without complying with the recordkeeping requirements established by RCW 19.09.200, .210
16 and WAC 434-120-125, -130, -135, -140 as currently enacted or subsequently amended;

17 (e) Soliciting charitable contributions under the name, registration
18 number, tax-exempt number, or EIN of any other organization unless Defendants have
19 obtained the written consent of such organization. Defendants must maintain a copy of such
20 consent for three years following any solicitation activity conducted Defendants;

21 (f) Engaging in any commercial fundraising or commercial coventurer
22 activities, as defined by RCW 19.09 or WAC 434-120 as currently enacted or subsequently
23 amended, on behalf of any entity without being registered with the Secretary of State as a
24 commercial fundraiser or commercial coventurer as required by RCW 19.09.065 as currently
25 enacted or subsequently amended;

1 (g) Failing to make any of the disclosures required by RCW 19.09.100, as
2 currently enacted or subsequently amended, other applicable law, in any oral or written
3 solicitations.

4 **4.4 Suspended Injunctions.** The following injunctions are set forth herein as a
5 remedy for the violations committed by Defendants, but their implementation is suspended upon
6 condition that Defendants shall not commit any material violation of the other injunctive terms
7 of this Stipulated Judgment. Should the Court find in the future that any of the Defendants who
8 are party to this Stipulated Judgment have violated materially any of the injunctive provisions of
9 this Stipulated Judgment, then the parties hereby stipulate and agree that upon a showing of
10 such violation, the Court shall enter the following injunctive relief:

11 Defendants and all successors, assigns, transferees, officers, agents, servants,
12 employees, representatives, affiliates, attorneys and all other persons or entities in active concert
13 or participation with Defendants are hereby permanently enjoined and restrained from directly
14 or indirectly engaging in the following acts or practices in the State of Washington:

15 (a) Engaging in charitable solicitation, as defined by RCW 19.09 as
16 currently enacted or subsequently amended, of any whatsoever, including but not limited to any
17 solicitation where states or implies any appeal for the support of veterans, children, children's
18 hospitals, or other programs to benefit youth, battered women, domestic violence victims, the
19 disabled, or any other charitable or purportedly charitable cause of any kind, regardless of
20 whether the beneficiary or beneficiaries of such solicitations are individuals, groups,
21 organizations, associations, for-profit corporations, non-profit corporations, hospitals, group
22 homes, or other entity;

23 (b) Owning, operating, managing, consulting with, or working for or on
24 behalf of any charitable organization that conducts charitable solicitations in the State of
25 Washington, whether as an owner, co-owner, partner, employee, manager, salesperson,
26

1 telefunder or telemarketer, solicitor, script writer or editor, advisor or consultant, or independent
2 contractor

3 (c) Engaging in the business of a commercial fundraiser, commercial
4 coventurer, or fundraising consultant as defined in RCW 19.09 or WAC 434-120 as currently
5 enacted or subsequently amended, or owning, managing, or working for or on behalf of such
6 commercial fundraiser or fundraising consultant, whether as an owner, co-owner, partner,
7 employee, manager, salesperson, telefunder or telemarketer, solicitor, script writer or editor,
8 advisor or consultant, or independent contractor

9 V. CIVIL PENALTIES

10 5.1 Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendants shall pay
11 civil penalties in the amount of \$120,000. However, the entire \$120,000 is suspended on
12 condition of compliance with all of the terms of this Judgment and Decree.

13 5.2 The suspended portion of the civil penalty shall be imposed by the Court upon
14 a showing by the State, upon reasonable notice to the Defendants, that one or more of the
15 Defendants materially has violated one or more of the terms of this Judgment and Decree.
16 This suspended civil penalty shall be viewed as analogous to liquidated damages (or a
17 liquidated penalty) for all of the past violations committed by Defendants in addition to
18 whatever violations Defendants may commit in the future, to be payable in case of a material
19 violation in the future.

20 VI. RESTITUTION

21 6.1 Pursuant to RCW 19.86.080, Defendants agree to remit to the Attorney
22 General's Office the sum of \$3005.00 as restitution to consumers who have made charitable
23 donations to Defendants after October 26, 2004. This amount reflects restitution to those
24 consumers who donated to Defendants after October 26, 2006, and who complained to or
25 inquired of Attorney General's Office or the Secretary of State's Office regarding their
26

1 donations, or whose identity the Attorney General's Office obtained through its investigation.
2 The Defendants shall remit this sum no later than August 1, 2007.

3 **6.2** If the Attorney General's Office is unable to distribute restitution to any
4 consumer entitled to restitution under this section, the Attorney General's Office, at its
5 discretion, shall apply that amount toward additional attorney's fees or costs, and/or toward
6 consumer education.

7 **6.3** Defendants shall make this payment by cashier's check, made payable to the
8 Attorney General—State of Washington, and shall be delivered to the Office of the Attorney
9 General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188, to the attention of
10 Cynthia Lockridge.

11 **VII. ATTORNEYS' FEES AND COSTS**

12 **7.1** Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay
13 costs and attorneys' fees incurred in pursuing this matter in the amount of \$13,840.00.
14 However, \$6920.00 is hereby imposed; Defendants may make incremental payments toward
15 satisfying the imposed costs and attorney's fees in the amount of \$500.00 per month,
16 beginning on August 1, 2007. Defendants shall make each subsequent monthly payment of
17 \$500.00 on or before the first business day of each successive month. Defendants' final
18 payment shall be made on or before September 1, 2008. Defendants' failure to make a
19 payment in accordance with the payment schedule of this paragraph shall be deemed a
20 violation of the Consent Decree. Interest on any unpaid balance of this amount shall accrue in
21 the amount of 12% per annum. The remaining \$6920.00 in costs and attorney's fees shall be
22 suspended conditioned on full compliance with the Judgment and Decree.

23 **7.2** Defendants shall bear Plaintiff's reasonable costs, including reasonable
24 attorneys' fees, for enforcing this Judgment in any successful action to enforce any of its
25 provisions.
26

7.3 Defendants shall make all payments by cashier's check, made payable to the Attorney General—State of Washington, which shall be delivered to the Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188, to the attention of Cynthia Lockridge.

VIII. ENFORCEMENT

8.1 Pursuant to RCW 19.86.140, any violation of the terms of this Judgment may form the basis for further enforcement proceedings.

8.2 The violation of any of the terms of this Judgment shall constitute a violation of the Consumer Protection Act, RCW 19.86 et seq.

8.3 Jurisdiction is retained for the purpose of enabling any party to this Judgment, with or without the prior consent or approval of the other party, to apply to the Court at any time for the enforcement of compliance therewith, the punishment of violations thereof, or the modification or clarification thereof.

8.4 Nothing in this Judgment shall be construed as to limit or to bar any other governmental entity or any other consumer in the pursuit of additional remedies against Defendants.

8.5 Representatives of the Office of Attorney General shall be permitted, upon 10 days' notice to Defendants, to access, inspect, and/or copy all business records or documents under the control of Defendants, in order to monitor compliance with the injunctive provisions of this Stipulated Judgment.

8.6 Under no circumstances shall this Judgment or the names of the State of Washington or the Office of the Attorney General, Consumer Protection Division, or any of its employees or representatives be used by Defendants' agents or employees in connection with the promotion of any product or service or an endorsement or approval of Defendants' practices.

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